Office of the
Merit Commissioner

Report on Staffing Reviews

2012/13

UPHOLDING FAIR HIRING IN THE BC PUBLIC SERVICE

December 2013 (Amended)

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Executive Summary

In 2012/13, the Merit Commissioner received seven requests for review of appointments, four of which were found eligible for consideration. This is a much lower number of requests than have been received by the Office in the last two fiscal years.

The Merit Commissioner issued five review decisions in 2012/13 (including a decision resulting from a request received late in 2011/12) with an average response time of 27.5 days. In all five cases, the Commissioner found the appointments were the result of merit-based processes.

It was reported that at the step in the recourse process prior to a review by the Merit Commissioner - an internal inquiry by the deputy minister or equivalent - 29 requests were received in 2012/13, 25 of which were eligible for consideration. Appointment decisions were upheld in 20 of these cases. The average time of 27 days for the internal inquiry decision to be issued showed a marked improvement over previous years.

The Office consulted a number of independent offices within the BC Public Service to gauge support within their organizations for employees' to engage in the recourse process including exercising their rights to request a staffing review, should they so wish. The majority of responses from these organizations indicated that employee applicants receive notice of staffing process outcomes and are offered feedback. One organization demonstrated strong commitment to employees by proactively ensuring, through a variety of means, that they are aware of their right of review.

The Office of the Merit Commissioner found improvements in the quantity and quality of the information available to employee applicants on how to obtain feedback and on the review process. However, the Office continues to have concerns with respect to the accessibility of this information and whether current notification and feedback practices are sufficient to ensure all employee applicants are properly informed of their right to question a staffing decision.

Introduction

The *Public Service Act* (the *Act)* states that appointments to and from within the public service must be based on the principle of merit. Merit is commonly accepted to mean that appointments are based on an assessment of competence and ability to do the job, and are non-partisan. Since December 2003, Part 4 of the *Act* has given BC Public Service employees who are unsuccessful applicants in a competition the right to request a review of a hiring decision. The request must be based on the reasons for the employee's belief that either the appointment did not comply with the principle of merit and/or was not a result of a process designed to appraise the knowledge, skills and abilities of applicants.

There are three steps in the review process.

Step 1 Feedback

- an unsuccessful applicant may request feedback or an explanation from the hiring manager
- the request must be made within five calendar days of receiving notice of the staffing decison

Step 2 Internal Inquiry

- an unsuccessful employee applicant may make a request to the deputy minister or the head of the organization for an inquiry into the staffing decision
- the request must be made within five calendar days of receiving the feedback or explanation from the hiring manager
- for hiring decisons related to excluded positions, this is the final level of review of the decision

Step 3 Review

- for hiring decisions related to unionized positions, the unsuccessful employee applicant may request a review by the Merit Commissioner of the staffing decision
- a request for a review may only be based on the grounds submitted to the deputy minister
- the request must be made within five calendar days of receiving the results of the internal inquiry

The Merit Commissioner is responsible for making an objective determination of whether the proposed appointment was the result of a merit-based process.

> A review by the Merit Commissioner is guided by the requirements of legislation, collective agreement provisions, and policy related to hiring. It takes into consideration whether the process is fair and transparent, the assessment is relevant to the job, and the decisions made are reasonable.

In order to make a determination, all related documentation is examined and the employee requesting the review, as well as the hiring manager or others involved in the process are contacted to clarify issues and establish facts. After completing the review, the Merit Commissioner may find that the appointment was merit-based and dismiss the review or may direct that the deputy minister reconsider the appointment or proposed appointment. The Merit Commissioner's decision is final and binding.

Feedback

Feedback provides employee applicants with the opportunity to improve their performance as well as to increase their confidence in the appointment process. Moreover, as requesting feedback is the first step in the review of a staffing decision process, it is essential that employee applicants are aware that they are entitled to seek feedback on staffing decisions.

In her 2011/12 Annual Report, the Merit Commissioner noted that improvements had been made with respect to offering feedback. The letters advising unsuccessful applicants of the competition outcome in the 2012/13 review files as well as those in the 2012 Merit Performance Audit files, directed unsuccessful applicants to either the hiring manager or to the BC Public Service human resources information website (MyHR) for details on how to obtain feedback or on the overall hiring process.

Although it is considered good practice for hiring managers to advise employee applicants of their right to request a review of the staffing decision at the point of final notification, and provide additional information on the steps of the process if requested by the employee, this is not a requirement under legislation or current policy. Similarly, hiring managers are not required to provide this information during feedback to unsuccessful employee applicants. Therefore, it is unclear how aware employees are of their rights or of the review process. Also, while MyHR contains important details on the staffing review process, including a link to the Office of the Merit Commissioner website, as noted in 2011/12 the relevant pages continue to be difficult to find. A direct link would improve accessibility and transparency.

Internal Inquiries

The BC Public Service Agency (BCPSA) provides the Office with data on the number of requests received by deputy ministers for internal inquiries, Step 2 of the review process. The same data is collected by the Office directly from independent public service organizations subject to the Merit Commissioner's oversight.

Of the 29 requests for internal inquiries reported for the 2012/13 fiscal year, 25 were found eligible for an internal inquiry; and the deputy minister or head of the organization upheld the hiring panel's appointment decision in 20 of these cases. It was noted that the BCPSA conducted the internal inquiry on behalf of the deputy minister or organizational head in almost all cases.

> The number of internal inquiries reported remains low in relation to the number of appointments in the BC Public Service, at less than one per cent.

In 2012/13, the average response time to an internal inquiry was 27 days which is a significant improvement when compared to 2011/12 when it was an average of 34 days and to the three previous years when the overall average response time was 43 days. It is noted that the 2012 BC Government and Service Employees' Union (BCGEU) 16th Master Agreement included a new provision that requires deputy ministers to provide a response to a request for an internal inquiry within 30 days.

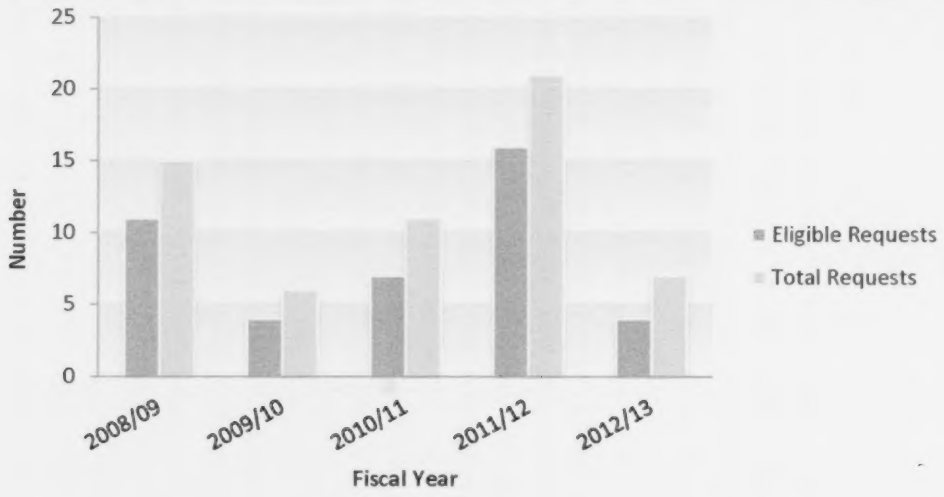
Requests for Review

During the 2012/13 fiscal year, the Merit Commissioner received seven requests for review of appointments which were made in five different ministries and in six geographic locations. Three of the requests were deemed ineligible for one of the following reasons:

- there was no appointment to review as the process was cancelled;
- the position was excluded; or
- there had been no request to the deputy minister for an internal inquiry.

The total number of requests for review received in 2012/13 was considerably lower than were received in each of the two previous fiscal years. Chart 1 below illustrates the number of review requests received and the number determined to be eligible since 2008/09.

Chart 1 – Review Requests by Fiscal Year



Of interest is the number of employee applicants who forward their concern to the Merit Commissioner following an internal inquiry as it is an indicator of how many continue to be dissatisfied following the deputy ministry or organizational head's response at step 2 of the process. Based on the internal inquiry information provided to the Office, there was an approximate 50% decrease in the number of applicants between 2011/12 and 2012/13 who submitted a request for review at step 3 after receiving a step 2 decision in support of the hiring panel's process.

The Merit Commissioner issued five review decisions in 2012/13 including a decision resulting from a request received late in 2011/12. All five decisions related to in-service competitions: four of which were for permanent appointments and the fifth was a process restricted to branch employees for a temporary appointment. In all five cases, the reviews were dismissed as the Commissioner found the appointments were the result of merit-based processes. Decisions related to these requests were issued between 22 and 32 days from receipt of the appointment documentation, with an average response time of 27.5 days.

Grounds for Review

While there were only five decisions issued over the course of 2012/13, employees put forward several grounds in their requests for review. Grounds common to more than one review request are described below.

Factors of merit inappropriately considered

In one case, concerns were raised that some candidates who were short-listed did not possess the stated qualifications. The review identified that the panel accepted candidates who possessed a different degree than the bachelor's degree that was stated in the posting as required. In addition, the panel chose not to evaluate candidates against one of the skill requirements that were listed as preferred rather than mandatory because it was not considered essential to the job. With respect to both issues, the review concluded that the panel exercised reasonable judgement and applied short-listing criteria consistently to the applicants.

Also in this case, the unsuccessful candidate believed that the panel did not consider years of continuous service. However, the review found that the panel had properly considered this factor and as there was a large spread in point scores between candidates, this calculation did not change the final ranking.

In another case, the concern raised was that the panel did not assess past work performance for the employee requesting the review. In this review, the Merit Commissioner concluded that the factors of merit were properly considered through a tiered approach where past work performance was only assessed for candidates who passed the interview.

A staged assessment process is a reasonable and efficient way to make appointment decisions.

Flawed assessment process

One review addressed whether it was appropriate for the panel when assessing a candidate's response to a behavioural competency question, to take into account the candidate's approach to a situation (e.g., behaviours and actions), as well as the outcome of that approach (e.g., an incorrect decision). The review considered the competency-based interviewing methodology and found no fault with the panel defining the essential elements required in a response as long as the elements were reasonable and job-related.

Other concerns raised which related to assessment processes included the lack of information with respect to the allocation of points in a written exercise, insufficient time provided to deliver a presentation, and the panel being unqualified to assess the complexity of the examples provided. In each case, the Merit Commissioner determined that the panel had developed a job-related assessment process and assessed candidates in a fair and consistent manner, including ensuring sufficient information and time was provided to candidates to allow them to complete the assessment process.

One case with particularly noteworthy issue is described in the highlighted section that follows.

Case Study

An unsuccessful candidate was concerned that the BC Public Service hiring process is fundamentally flawed as it determines the best qualified person on the basis of interview performance as opposed to on-the-job performance. It is not the role of the Merit Commissioner to prescribe the type of assessment to be used by hiring managers but to ensure that the chosen process is consistent with the relevant provisions of the legislation and is conducted in a fair, reasonable and transparent manner. In determining merit, the Public Service Act identifies the factors of merit that must be considered and although previous performance in the same or related job is not a stated factor, job performance may be assessed through other factors such as knowledge and past work performance.

Bias

In two of the reviews, the unsuccessful candidates considered there to be issues with bias. In one case, the concern was that the successful candidate had an advantage as that individual was already working in the area. In the other case, the impartiality of the interview panel was questioned given the reporting relationship between a member of the panel and the panel chair.

Any staffing process has elements of subjectivity, but it is how the panel utilizes good staffing practices that ensure the objective assessment of candidates. The reviews examined the circumstances of each of these competitions: there was no evidence of bias in either case and it was found that the panels took reasonable measures to ensure candidates were objectively evaluated.

Organization Culture

Healthy organizations are ones where open communications are encouraged and employees are comfortable in coming forward with their questions and concerns. With respect to employees' right of review, positive indications of such an organizational culture include the availability of information on the assessment, inquiry and review process, as well as the provision of quality feedback. Such considerations enhance transparency and may in turn, increase employees' confidence in the hiring process. Effective feedback also provides an opportunity for applicants to learn how to improve performance.

Independent Offices

In 2012/13, the Office of the Merit Commissioner canvassed 24 independent offices within the public service (e.g., tribunals, boards, and commissions) for information on any internal inquiries they may have received, as well as general information on how their organizations support employees' rights to request a staffing review.

Descriptions received of the organizations' practices varied from that of providing only the minimal requirements such as offering feedback, to strongly supporting employees' rights of review. Of the 18 organizations that responded to this request for information, all indicated that unsuccessful applicants are notified, either verbally or in writing, of the competition outcome and offered the opportunity to request feedback. A few organizations also indicated that the hiring manager provides further information on the right to request a review at the time of feedback, or when an individual expresses dissatisfaction with the feedback they receive.

One organization demonstrating a strong commitment to keeping employees informed, encourages staff to seek feedback for personal and career development reasons, and provides information on the recruitment process as well as the right of review on their internal website. In addition, presentations are delivered to employees on all aspects of the selection process, including review rights.

Conclusions

Overall, the Office observed a quicker response time at the internal inquiry phase as well as continued improvements to the information available on the right to request feedback and a review of a staffing decision. However, the Office found that it is unclear from the current notification and feedback practices whether employee applicants are aware of their right to request a review of a staffing decision and the legislated process. As key aspects of merit-based hiring processes are transparency and openness, considering whether employee applicants are sufficiently informed of their rights to request a review may warrant future study.

As the Merit Commissioner received only four requests for reviews in 2012/13 and in all cases the ministry's appointment decision was upheld, it is not reasonable to draw broad conclusions; however, the individual grounds put forth provide some insight into areas of concern and potential opportunities to improve hiring processes.

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Office of the Merit Commissioner